

Vol 5

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

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No. 244 ✓  
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JAMES M. MADDEN, ET ALS.,

*versus*

LYKES BROS.-RIPLEY STEAMSHIP COMPANY,  
INC., AND STEAMSHIP "YOUNGSTOWN".

\_\_\_\_\_  
PETITION FOR WRIT OF CERTIORARI  
AND  
BRIEF IN SUPPORT THEREOF.  
\_\_\_\_\_

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R. A. DOWLING,  
Of Counsel.

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INC., AND STEAMSHIP "YOUNGSTOWN".

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PETITION FOR WRIT OF CERTIORARI.

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A.

This libel for seamen's wages was filed on the 28th day of December, 1936, by eight seamen, members of the crew of the SS. "YOUNGSTOWN", owned and operated by the LYKES BROS.-RIPLEY STEAMSHIP COMPANY, INC., (now LYKES BROS., INC.) for the payment to them of *earned wages*, and overtime, which the Company owes them. They also claim the penalties under Revised Statutes 4529, Title 46, Chapter 596, United States Code.

Libellants were employed by the Steamship Company under Shipping Articles to make a foreign voyage to

France, Belgium and Holland, from the Port of Houston, Texas, on the steamship "YOUNGSTOWN", and return to the United States.

Libellants when the ship returned to the United States quit at Tampa, Florida.

Upon leaving the ship only half of their earned wages, and half of their earned overtime was paid to them. One-half of their earned wages and one-half of their overtime was withheld by the Captain without sufficient cause who refused to pay them, and they have never been paid.

Upon the trial (although the particular allegations were not made in the petition), it was shown by the evidence that watches were broken; that men were compelled to work overtime; that one of the men who had signed on as an oiler (MADDEN) was taken off his job as oiler and made to work as a deck engineer. This left but two oilers and the watches of the two oilers instead of being divided into three watches during the twenty-four hour day, were only divided into two watches, all in violation of law.

Libellants contend that Articles were breached, and they had a right to leave the ship. They contend that these Articles were breached when watches were broken, and when certain members of the crew were compelled to against their will work overtime.

The libellants are praying for the wages which is admittedly earned by them, plus the overtime which is admittedly earned by them, and which is being withheld by defendants.

The defendant corporation filed a special defense that the crew left the vessel in the United States, were deserters and therefore, not entitled to be paid their earned wages nor their earned overtime. No criminal charge of desertion was ever filed.

B.

After a hearing and after evidence was taken, as will appear from the Record, pp. 1 to 77, the District Court rendered judgment in favor of the defendant. 28 *Fed. Sup.* 197. (R. 83 to 86).

This was appealed to the Court of Appeal of the Fifth Circuit, which affirmed the decision. A rehearing was asked for and refused.

C.

Petitioners allege that the judgment of the lower Court, and of the Court of Appeal of the Fifth Circuit were erroneous, particularly, for the following reasons:

1. That the crew were entitled to quit, and leave the ship and to be paid *earned wages* and overtime whenever Shipping Articles were breached. That this is true even though the breach of Articles was not given as the reason for the crew leaving. That the libellants therefore were not deserters.
2. That the breaking of watches by oilers, on the orders of the Captain or the Chief Engineer of the Ship was against the law of the United States, and breached the Articles. That under the circumstances the crew was entitled to quit

and were entitled to be paid their *earned wages* and *earned overtime* up to the day of leaving the ship.

D.

The issues involved in this case is simply this:

Are seamen entitled to leave their ship in an American Port after a voyage to a foreign country and return when it is known that the Steamship Company has breached the shipping Articles?

Is the breaking of watches on the part of the officers of the ship by making two oilers do the work of three a sufficient ground for the crew to consider that Articles are breached and to leave the ship?

Has a steamship company the right to withhold and keep earned overtime of a crew because they left the ship?

We believe that the decision of the Fifth Circuit Court of Appeal in this case, is in direct conflict with cases in other Circuit Courts, and with decisions in the Supreme Court of the United States, and particularly with the following cases:

*O'Hara, et al., v. Luckenbach Steamship Co.*,  
46 S. Ct. 157, 269 W. S. 364;

*Westhoff v. Hawaiian Sugar Company*, 79th  
Fed. (2) 124 (2nd Circuit).

Wherefore, because of the importance of the questions involved, and the necessity of a prompt and final determination to avoid hardships to seamen in the future, who may be taken advantage of because of this decision

of the Fifth Circuit; and deprived of their earned wages on the pretext of desertion, petitioners respectfully pray that a writ of certiorari, may issue out of and under the seal of this Honorable Court to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that said Court do certify and send to this Court, for its review and determination, on a date certain therein to be named a full and complete transcript of the record, and all proceedings in this case entitled JAMES M. MADDEN, ET ALS., v. LYKES BROS.-RIPLEY STEAMSHIP COMPANY, INC., NO. 9324, of the said Court, and that the said Court's decree (United States District Court) may be reversed by this Honorable Court, and that your petitioners may have such relief in the premises as this Honorable Court may see fit and just.

ALEX. W. SWORDS,  
Attorney for Petitioner.

R. A. DOWLING,  
Of Counsel.  
NEW ORLEANS, LOUISIANA,  
JULY 9th, 1940.

**BRIEF IN SUPPORT OF PETITION FOR  
WRIT OF CERTIORARI.**

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**Opinions of the Court Below.**

The District Court's opinion is contained in the record, pages 83 to 86. The opinion of the Fifth Circuit Court of Appeals is contained in the record, pages 96 to 99.

**Jurisdiction.**

Jurisdiction is claimed for the reason that this is a seamen's case in Admiralty where certain members of a crew of the steamship "YOUNGSTOWN" were denied half of their earned wages, and half of their earned overtime because they left the ship after a foreign voyage, upon the return of the ship to the Port of Tampa, Florida, and because of the breach of Articles on the part of the ship operators.

Judgment of the Fifth Circuit Court of Appeals dismissing libellants' claim is in direct conflict with the decisions of the *Second Circuit* on the same subject matter, and also with the decision of the Supreme Court of the United States in the following cases:

*O'Hara, et als., v. Luckenbach Steamship Company, Inc.*, 46 S. Ct. 157, 269 U. S. 364;

*Westhoff v. Hawaiian Sugar Company*, 79 Fed. (2) 124, (*Second Circuit*).

**Statement of the Case.**

Libellants were members of the crew of the SS. "YOUNGSTOWN" who made a trip under Shipping Articles to various Ports in Europe and then returned to Tampa, Florida.



Upon their return to Tampa, they demanded their earned wages and demanded to be released from the ship.

The Captain of the ship gave them half of their earned wages, and half of their overtime which was earned, but refused to pay them the balance of their earned wages or their overtime and classed them as "deserters". This money has never been paid.

These men are claiming the balance of their earned wages, that is, the one half withheld from them, and the balance of their earned overtime and assert that they are not deserters, and that they had a right to quit ship because the Steamship Officers had breached the Articles, by compelling the oilers to break watches, and compelling one of the oilers to cease doing his work as an oiler but to take on another job as deck engineer which he did for fourteen days; that the other oilers were therefore compelled to work instead of eight hours per day, were compelled to work twelve hours per day in violation of the law, and in violation of the jurisprudence as set out in the *O'Hara-Luckenbach case, supra*.

#### **Argument.**

We believe that seamen are wards of the Admiralty, and have been so considered from time immemorial, and that the laws of the United States are made specially to protect them, and especially as to their wages.

This is a case where the wages were arbitrarily taken from them, and afterwards they were classed as deserters. (A mere pretext).

If they were really deserters then, no salary or wages or overtime whatsoever should have been paid them. The fact that one half of their wages, and one half of their earned overtime, was paid them precludes the argument of the defendant corporation that they were deserters.

We believe that they had a right to quit ship because the Articles were breached, and watches of the various oilers were broken, and the oiling of the ship had to be done by two oilers. The Court of Appeals admits that watches were broken (R. p. 106).

We further say that even though they did not assign this as a reason for leaving the ship, still if and such conditions did exist, then they still had a right to leave the ship and not be declared deserters.

"It is immaterial that a seaman entitled to his discharge, wages, and penalty for violations of statutes by the vessel did not assign such violation as his reason for leaving the ship."

*So. Pacific Co. v. Hair, 24 Fed. (2) 94.*

"Sailors must be divided into watches of equal or approximately equal numbers, notwithstanding there may not be sufficient work to keep the night watch busy, and where watches are not so constituted a seaman is entitled to discharge and pay earned, in view of the long established meaning of the term 'watch', and the distinction between the sea watch and anchor watch."

*O'Hara, et als., v. Luckenbach SS. Co., 46 S. Ct. 157, 269 U. S. 364.*

"Where overtime had been required of members of a crew, and watches broken, that, and in that event

only they were entitled to discharge. This is true although they may assign another reason for leaving the ship."

*Westhoff v. Hawaiian Sugar Co.*, 79 Fed.  
(2) 124.

### **Conclusion.**

We respectfully urge that this case is peculiarly one calling for exercise by this Court of its supervisory powers, in order that an injustice may not be done to many seamen and for the benefit of all seamen, and for uniform jurisprudence on the question of right to wages; and particularly for the benefit of these libellants who are wards of the Admiralty and who have been unjustly and illegally deprived of their hard earned wages and overtime.

ALEX. W. SWORDS,  
Attorney for Petitioner.

R. A. DOWLING,  
Of Counsel.